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Frank C. Eisenschenk, Ph.D., Patent Attorney

COMMUNICATION RE: PATENT TERM ADJUSTMENT  
Examining Group 1647  
Patent Application  
Docket No. C.R.106  
Serial No. 10/539,962

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Examiner : Christine J. Saoud  
Art Unit : 1647  
Applicants : Richard J. Fagan *et al.*  
Serial No. : 10/539,962  
Conf. No. : 6818  
Filed : June 17, 2005  
For : Splice Variant of Human Placental Growth Hormone

Office of Patent Legal Administration  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

COMMUNICATION REGARDING  
PATENT TERM ADJUSTMENT

Sir:

Applicants received a Notice of Allowance dated June 18, 2009, in the above-identified patent application. The determination of Patent Term Adjustment (PTA) Under 35 U.S.C. 154(b) indicates that the patent for this application is eligible for 164 days of patent term adjustment. Applicants respectfully disagree with this determination and submit that this application is entitled to only 41 days of PTA.

The subject application was filed under 35 U.S.C. §371, but did not complete all of the filing requirements for acceptance until November 13, 2006. Applicants subsequently received a Restriction Requirement dated November 13, 2007, which constituted no delay on the part of the Patent Office.

In reply to the Restriction Requirement, Applicants submitted an Election Under 35 U.S.C. §121 via EFS on December 13, 2007. Subsequent to filing that Election, Applicants received

a Notice to Comply dated March 26, 2008 stating that the Election filed on December 13, 2007 contained an omission that required correction. Specifically, the elected claims contained sequences for which no Sequence Listing had been submitted.

Applicants filed a Supplemental Preliminary Amendment with the appropriate Sequence Listing via EFS on April 14, 2008. Pursuant to 37 CFR 1.704(c)(7), this constituted an applicant delay of 123-days from the date the Election was filed to the date of filing the corrective amendment. However, a review of the PAIR record does not show this applicant delay.

The remainder of the record appears to be correct in that there was a 165-day delay by the Patent Office in transmitting the first Office Action on January 26, 2009. There was also a 1-day delay by the Applicants in filing an Amendment via EFS on April 27, 2009.

Applicants respectfully request that the PAIR record be reviewed and corrected as indicated above to show a Patent Term Adjustment of 41 days (165 days – 123 days – 1 day = 41 days).

Applicants do not believe there should be a fee associated with this Communication. But, the Commissioner is hereby authorized to charge any fees under 37 CFR §§1.16 or 1.17 that may be required by this paper to Deposit Account No. 19-0065.

Respectfully submitted,



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